

AMENDED IN ASSEMBLY JUNE 19, 2002

AMENDED IN SENATE MAY 16, 2002

AMENDED IN SENATE APRIL 30, 2002

AMENDED IN SENATE APRIL 2, 2002

SENATE BILL

No. 1980

Introduced by Senator McPherson

February 22, 2002

An act to amend Section 1524 of, and to add Section 1524.3 to, the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL'S DIGEST

SB 1980, as amended, McPherson. Search warrants.

Existing law authorizes a court or magistrate to issue a warrant for the search of a place and the seizure of property or things identified in the warrant where there is probable cause to believe that specified grounds exist. Federal law requires a provider of electronic communication service or a remote computing service to disclose to a governmental entity the name, address, local and long distance telephone connection records, and other billing, payment, service, and calling records, of a subscriber to or customer of the service when the governmental entity uses, among other means, a warrant, a court order, an administrative subpoena authorized by a federal or state statute, or a federal or state grand jury or trial subpoena. Federal law provides similar requirements for the collection of the contents of stored communications in the possession of a provider of electronic communication service or a remote computing service, with specified consumer notice requirements. State law provides for a warrant

procedure for the acquisition of these records. Existing law provides that no cause of action shall lie against specified parties for assistance in accordance with a warrant.

This bill would detail state procedures, similar to those described in federal law, for a governmental entity to gather similar specified records, not including the contents of stored communications, from a provider of electronic communication service or a remote computing service by search warrant. This bill would specify that no notice need be given to a subscriber or customer by a governmental entity receiving records pursuant to these procedures. It would also provide for motions to quash or modify a warrant under these provisions in specified circumstances, and would require a provider of wire or electronic communication services or a remote computing service to preserve records and evidence on request of a ~~governmental entity~~ *peace officer* as provided. This bill would specify that no cause of action shall be brought against specified parties for providing information, facilities, or assistance in good faith compliance with a search warrant.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1524 of the Penal Code is amended to
2 read:

3 1524. (a) A search warrant may be issued upon any of the
4 following grounds:

5 (1) When the property was stolen or embezzled.

6 (2) When the property or things were used as the means of
7 committing a felony.

8 (3) When the property or things are in the possession of any
9 person with the intent to use it as a means of committing a public
10 offense, or in the possession of another to whom he or she may
11 have delivered it for the purpose of concealing it or preventing its
12 being discovered.

13 (4) When the property or things to be seized consist of any item
14 or constitute any evidence that tends to show a felony has been
15 committed, or tends to show that a particular person has committed
16 a felony.

17 (5) When the property or things to be seized consist of evidence
18 that tends to show that sexual exploitation of a child, in violation



1 of Section 311.3, or possession of matter depicting sexual conduct
2 of a person under the age of 18 years, in violation of Section
3 311.11, has occurred or is occurring.

4 (6) When there is a warrant to arrest a person.

5 (7) When a provider of electronic communication service or
6 remote computing service has records or evidence, as specified in
7 Section 1524.3, showing that a misdemeanor or felony has been
8 committed, or that a particular person has committed a
9 misdemeanor or felony, or that the service was used in the
10 commission of a misdemeanor or felony.

11 (b) The property or things or person or persons described in
12 subdivision (a) may be taken on the warrant from any place, or
13 from any person in whose possession the property or things may
14 be.

15 (c) Notwithstanding subdivision (a) or (b), no search warrant
16 shall issue for any documentary evidence in the possession or
17 under the control of any person, who is a lawyer as defined in
18 Section 950 of the Evidence Code, a physician as defined in
19 Section 990 of the Evidence Code, a psychotherapist as defined in
20 Section 1010 of the Evidence Code, or a clergyman as defined in
21 Section 1030 of the Evidence Code, and who is not reasonably
22 suspected of engaging or having engaged in criminal activity
23 related to the documentary evidence for which a warrant is
24 requested unless the following procedure has been complied with:

25 (1) At the time of the issuance of the warrant the court shall
26 appoint a special master in accordance with subdivision (d) to
27 accompany the person who will serve the warrant. Upon service
28 of the warrant, the special master shall inform the party served of
29 the specific items being sought and that the party shall have the
30 opportunity to provide the items requested. If the party, in the
31 judgment of the special master, fails to provide the items
32 requested, the special master shall conduct a search for the items
33 in the areas indicated in the search warrant.

34 (2) If the party who has been served states that an item or items
35 should not be disclosed, they shall be sealed by the special master
36 and taken to court for a hearing.

37 At the hearing the party searched shall be entitled to raise any
38 issues that may be raised pursuant to Section 1538.5 as well as a
39 claim that the item or items are privileged, as provided by law. The
40 hearing shall be held in the superior court. The court shall provide

1 sufficient time for the parties to obtain counsel and make any
2 motions or present any evidence. The hearing shall be held within
3 three days of the service of the warrant unless the court makes a
4 finding that the expedited hearing is impracticable. In that case the
5 matter shall be heard at the earliest possible time.

6 (3) The warrant shall, whenever practicable, be served during
7 normal business hours. In addition, the warrant shall be served
8 upon a party who appears to have possession or control of the items
9 sought. If after reasonable efforts, the party serving the warrant is
10 unable to locate the person, the special master shall seal and return
11 to the court for determination by the court any item that appears
12 to be privileged as provided by law.

13 (d) As used in this section, a “special master” is an attorney
14 who is a member in good standing of the California State Bar and
15 who has been selected from a list of qualified attorneys that is
16 maintained by the State Bar particularly for the purposes of
17 conducting the searches described in this section. These attorneys
18 shall serve without compensation. A special master shall be
19 considered a public employee, and the governmental entity that
20 caused the search warrant to be issued shall be considered the
21 employer of the special master and the applicable public entity, for
22 purposes of Division 3.6 (commencing with Section 810) of Title
23 1 of the Government Code, relating to claims and actions against
24 public entities and public employees. In selecting the special
25 master the court shall make every reasonable effort to ensure that
26 the person selected has no relationship with any of the parties
27 involved in the pending matter. Any information obtained by the
28 special master shall be confidential and shall not be divulged
29 except in direct response to inquiry by the court.

30 In any case in which the magistrate determines that, after
31 reasonable efforts have been made to obtain a special master, a
32 special master is not available and would not be available within
33 a reasonable period of time, the magistrate may direct the party
34 seeking the order to conduct the search in the manner described in
35 this section in lieu of the special master.

36 (e) Any search conducted pursuant to this section by a special
37 master may be conducted in such a manner as to permit the party
38 serving the warrant or his or her designee to accompany the special
39 master as he or she conducts his or her search. However, that party
40 or his or her designee shall not participate in the search nor shall

1 he or she examine any of the items being searched by the special
2 master except upon agreement of the party upon whom the warrant
3 has been served.

4 (f) As used in this section, “documentary evidence” includes,
5 but is not limited to, writings, documents, blueprints, drawings,
6 photographs, computer printouts, microfilms, X-rays, files,
7 diagrams, ledgers, books, tapes, audio and video recordings, films
8 or papers of any type or description.

9 (g) No warrant shall issue for any item or items described in
10 Section 1070 of the Evidence Code.

11 SEC. 2. Section 1524.3 is added to the Penal Code, to read:

12 1524.3. (a) A provider of electronic communication service
13 or remote computing service, as used in Chapter 121 (commencing
14 with Section 2701) of Title 18 of the United States Code, shall
15 disclose to a governmental prosecuting or investigating agency the
16 name, address, local and long distance telephone toll billing
17 records, telephone number or other subscriber number or identity,
18 and length of service of a subscriber to or customer of that service,
19 and the types of services the subscriber or customer utilized, when
20 the governmental entity is granted a search warrant pursuant to
21 paragraph (7) of subdivision (a) of Section 1524.

22 (b) A governmental entity receiving subscriber records or
23 information under this section is not required to provide notice to
24 a subscriber or customer.

25 (c) A court issuing a search warrant pursuant to paragraph (7)
26 of subdivision (a) of Section 1524, on a motion made promptly by
27 the service provider, may quash or modify the warrant if the
28 information or records requested are unusually voluminous in
29 nature or compliance with the warrant otherwise would cause an
30 undue burden on the provider.

31 (d) A provider of wire or electronic communication services or
32 a remote computing service, upon the request of a ~~governmental~~
33 ~~entity~~ *peace officer*, shall take all necessary steps to preserve
34 records and other evidence in its possession pending the issuance
35 of a search warrant or ~~other process~~ *a request in writing and an*
36 *affidavit declaring an intent to file a warrant to the provider.*
37 Records shall be retained for a period of 90 days, which shall be
38 extended for an additional 90-day period upon a renewed request
39 by the ~~governmental entity~~ *peace officer*.

1 (e) No cause of action shall be brought against any provider, its
2 officers, employees, or agents for providing information,
3 facilities, or assistance in good faith compliance with a search
4 warrant.

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